

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Dec-12-2013

Judge : Harish Tandon

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET W.P.No.1195 of 2013 IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction ORIGINAL SIDE In the matter of : Medicare
Services (India) PVT.LTD.& Anr.

And The CustoMs.Excise and Service Tax Appellate Tribunal, EZB &
ORS.BEFORE: The Hon'ble JUSTICE HARISH TANDON Date : 12th December,
2013.

Appearance : Mr.J.P.

Khaitan, Sr.Mr.Agnibesh Sengupta, Mr.Ravi K.

Kapoor, Mr.Subhrendu Halder, Adv.Adv.Adv.Adv.The Court : Despite service,
there is no appearance on behalf of the respondents.

The affidavit-of-service filed today be kept on record.

The petitioner says that the show-cause notice issued by the department under Section 73 of the Finance Act, 1994 is bad illegal and having barred by limitation.

It is further submitted that the plea of limitation was taken before the Commissioner which he did not consider at the time of disposal of an application for stay and or waiver of the pre-condition deposit.

From the averments in the writ petition, it appears that the petitioner No.1 was initially registered under the Insurance Auxiliary Service.

Because of the subsequent insertions of sub-Sections 25(a) and Section 105 (zzze) of the Finance Act, 1994 which came into effect in the year 2005, the said registration was subsequently amended.

The Commissioner has opined that the petitioner is covered under the Insurance Auxiliary Service and, therefore, is liable to pay the service tax and reversed the CENVAT Credit which he availed.

While disposing of the application, the Tribunal records that the petitioner has not been allowed the CENVAT Credit on the ground the documents of which they availed credit were not the prescribed ones.

The Tribunal further held the entitlement to avail the CENVAT Credit on the merit can only be examined at the time of disposal of an appeal as the department has not made any submission thereupon.

The order impugned in this writ petition reveals that the Tribunal recorded the existence of a prima facie case and found that the reversal of CENVAT Credit should not have been made on mere technicality that the document was not in prescribed form but directed the petitioner to deposit 10% of the duty is not supported by any reasons.

Mr. Khaitan informs that the matter is fixed before the Tribunal today and there is every chance that the appeal would be dismissed because of non-compliance of the direction for deposit of 10% of the duty and, therefore, some interim protection should be given to the petitioner.

This Court finds that an arguable case has been made out which needs to be decided in presence of the respondents.

There shall be an interim order of stay of all further proceedings of the appeal pending before the Customs, Excise and Service Tax Appellate Tribunal, Kolkata for a period of one week reopening of the Court following the Christmas Vacation or until further order whichever is earlier.

The petitioner is directed to communicate this order to the respondents and shall also indicate that this matter shall appear on 18.12.2013 in the supplementary list.

The petitioner shall file affidavit-of -service showing the compliance of the directions made hearing on the returnable date.

SB-1 (HARISH TANDON, J.)

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